

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

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MARCUS ALLEN DUTTON

*

CASE NO. 09-23853 RAG

DEBTOR

*

Chapter 13

* * * * *

MOTION TO DISMISS CASE FOR
FAILURE TO PROSECUTE CASE

Ellen W Cosby, Trustee, files this Motion to Dismiss Case and, for cause, states as follows:

1. The plan in this Chapter 13 case was confirmed by Order entered October 28, 2009.
2. Subsequent to confirmation of the plan, the Trustee discovered that the confirmed plan is not adequately funded because of creditor claim(s) not known of at the time of confirmation.
3. Upon identification of the funding shortage, the Trustee notified the Debtor(s) and counsel of the problem, and requested that the Debtor(s) cooperate in correcting the funding shortage by filing of a Modified Plan to provide the necessary increase in plan payments and/or term.
4. More than 30 days have passed since the Trustee's communication to the Debtor(s). The proposed Modified Plan has not been filed. To the Trustee's knowledge, no objection to the claim(s) creating the funding shortage has been filed, nor has the Trustee been advised that any other action to resolve the funding problem has been initiated by the Debtor(s).
5. The failure of the Debtor(s) to timely resolve the funding shortage jeopardizes ultimate success of the plan: as time passes, the remaining term of the plan is shortened, making it more and more difficult to correct funding. For this reason, the failure of the Debtor(s) to resolve funding issues is creating an unreasonable delay prejudicial to creditors.
6. The failure of the Debtor(s) to participate in resolution of the funding shortage represents a violation of a Debtor's duty under 11 U.S.C. §521(3) to cooperate with the trustee.
7. For the reasons stated, cause exists less than 11 U.S.C. §1307© to dismiss this case.

WHEREFORE, the Trustee requests this Court to dismiss this case, subject to §109(g) of the Bankruptcy Code, and to grant such other relief as is just.

DATED: March 2, 2010

/s/ Ellen W Cosby
Ellen W Cosby
Chapter 13 Trustee
P O Box 20016
Baltimore, MD 21283-0016
410-825-5923
Inquires@ch13balt.com

TO THE DEBTOR(S): TAKE NOTICE THAT, UNLESS YOU FILE A RESPONSE IN WRITING WHICH JUSTIFIES OR EXPLAINS THE ALLEGATIONS IN THIS MOTION WITHIN 20 DAYS OF THE DATE IN THE CERTIFICATE OF SERVICE BELOW, THIS CASE MAY BE DISMISSED WITHOUT FURTHER NOTICE, AND YOU MAY BE BARRED FROM FILING A NEW BANKRUPTCY FOR 180 DAYS AFTER THE DATE OF THE DISMISSAL.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was mailed by first-class mail on March 2, 2010 to:

Marcus Allen Dutton
1405 Hollins Street
Baltimore, MD 21223

Robert Grossbart, Esquire
One N. Charles St., Suite 1214
Baltimore, MD 21201

/s/ Ellen W Cosby
Ellen W Cosby